An Update on Cross-border Litigations in China: Online Case Filing Platform Launched for Foreign Parties

Description

From February 3, 2021, China's online court platform, a mini-program on WeChat, has launched a case filing service for foreign parties (for purpose of this post, including Chinese citizens residing overseas) to cross-border litigation in civil and commercial matters, a response to the current ongoing Covid-19 pandemic causing failure or delay in delivering justice. The new service is set forth in *Several Provisions on Providing Online Case Filing Services for Cross-border Litigants (hereinafter as* ***the Provisions****)*, a new regulation issued by China Supreme Court.



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While regular COVID-19 control measures are still existing all over the world, the Provisions provide more convenient and efficient case filing services for oversea parties to bring a case to Chinese courts.

As an experienced legal team focusing on the cross-border civil dispute resolution, here we summarized the new rules and procedures of case filing under the Provisions, for your reference.

I. **The Scope of Foreign Parties to Cross-border Litigation**

According to Article 1 of the Provisions, the foreign litigants who can initiate the online case filing include:

a. Foreign individuals / Enterprises or organizations incorporated abroad.
b. Residents of Hong Kong, Macau or Taiwan / Enterprises or organizations incorporated in Hong Kong, Macau or Taiwan.
c. Chinese citizens who have their habitual residences in foreign countries, Hong Kong SAR, Macau SAR or Taiwan.

In addition, Article 2 of the Provisions stipulates that the online service only applies to first-instance civil and commercial litigations. In other words, such rules are not applicable to appellate court proceedings.

II. **The Online Application Procedures**

The services are available in simplified and traditional Chinese as well as English, which can be handled by the foreign litigants themselves.

1. *First Step: identity verification*

The identify verification can be conducted with the support of an online platform of China National Immigration Administration. If identity verification cannot be done thereby, it will be conducted by courts manually, whereby the identity certificates submitted shall be notarized and legalized as normally required, and then be mailed to China courts. [1]After receiving and examining the identity certificates, the litigants will be notified of the result of passing the verification or not within 3 working days.[2]

2. Entrusting a PRC Lawyer

As per the provisions of *Civil Procedure Law* and its interpretation,[3] when a foreign party hires a Chinese lawyer for legal representation in China court proceedings, the power of attorney issued from outside of China by foreign party shall be notarized at local notary offices or law firms and/or legalized/authenticated at Chinese consulates in that country or regions. These formalities are quite complicated and onerous wasting time and money. This is particular a cute problem amid this ongoing covid pandemic.

As a result, the most highlighted and welcomed part in the Provisions is that a video witnessing process can be conducted by courts in replacement of the time-consuming notarization and/or legalization process of the power of attorney, provided that the identity of the foreign party has been verified as described above and now entrusts a PRC registered lawyer for legal representation.

In details, once passing identify verification, the foreign party to cross-border litigations shall apply for

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the online video witnessing in advance, and then the video witnessing process will be initiated by the judge and joined by the foreign party and its appointed Chinese lawyer. The parties should use the common language of China or aided by a translator. [4]

With the online witnessing by the judge, the foreign parties and their entrusted lawyers sign the power of attorney, and there is no need to go through the procedures of notarization, authentication and transmission.

After the online video witnessing, the entrusted Chinese lawyers can handle the online filing, online payment and other matters on the behalf of their principals.

Please note that this easing and facilitation are only available when the foreign parties hire a Chinese lawyer in representing his or her case in China courts. If they hire non-lawyer people to represent them in cases, then the normal notarization and legalization of the power of attorney shall still apply.

3. Submitting the Materials Online

According to Article 7 of the Provisions, the litigants shall submit the materials [5]online which include (or the submission can be conducted by the entrusted PRC registered lawyer):

(1) The complaints setting out the claims and basic facts and legal grounds;

(2) The identity certificates (with notarization, authentication and transmission as required);

(3) The evidence materials, either paper or digital;

4. Time Limits

The court will file cases within 7 working days of successful applications. If the materials do not meet the requirements, the court will notify the litigants and give them 15 days to make corrections, which can be extended to 30 days if they apply for more time.

The litigants will be able to check the progress of their applications online, and specific reasons will be given when the material in failed applications is sent back.

III. **The Development and Limitation**

The online case filing service is such a remarkable progress that enables all parties involved in litigations to work efficiently and saves both time and money. Especially in the context of COVID-19 pandemic, the new service protects the litigation rights of overseas people and enterprises and allows lawyers to offer expedient services for foreign-related cases.

However, given the fact that online mini program is still under construction, so the detailed procedures and requirements of online video witnessing vary from court to court. What's more, the requirements of documents submission in cross-border cases are still complicated. Whether the civil complaints could be signed during the video witnessing is unknown. We recommend that complaints shall be signed in that process as well.

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We will keep an eye on future legislative developments and practical precedents. Should you want to know more information about civil litigations in China, please feel free to contact us.

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[1] The detailed requirements are the same as the Article 523 of Interpretation of the Supreme People's Court concerning the application of the Civil Procedure Law of the People's Republic of China.

More details please refer to our previous article "The Requirements on Documents in Foreign-related Civil Cases in China"

[2] In accordance with Article 4 and 5 of the Provisions.

[3] In accordance with Article 59 and 264 of Civil Procedure Law and Article 524, 525 and 526 of its Interpretation,

[4] In accordance with Article 6 of the Provisions.

[5] All these materials should be translated into simplified Chinese.

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